

UNITED STATES OF AMERICA

V.

DAVID M. HICKS

**DEFENSE REPLY TO  
GOVERNMENT RESPONSE TO  
MOTION FOR A BILL OF  
PARTICULARS**

**31 October 2004**

The Defense in the case of the *United States v. David M. Hicks* requests the court direct the government to provide the defense with a bill of particulars sufficient for the defense to prepare a defense, and in reply to the government's response to the defense motion states as follows:

1. The government's response to the defense motion for a bill of particulars boils down to the following two assertions:

- a. The charge sheet is sufficient; and

- b. All the details necessary have been provided in discovery already given to defense.

2. In making these assertions the government relies on case law arising out of prosecutions of crimes set forth in various criminal codes, i.e. the UCMJ, and/or the United States Criminal Code. This reliance is misplaced. Case law makes it clear the government must be very specific when it levels “terrorist” charges at individuals as it has done to Mr. Hicks in this case.

3. The case of *U.S. v. Bin Laden*, 92 F.Supp.2d 225 (S.D.N.Y. 200) the court analyzed the requirements for charges in terrorist cases. The court stated:

Once one focuses, however, on the details of a particular case, it becomes apparent that the foregoing, oft-repeated generalities [regarding when bills of particulars should be granted] provide little guidance. The line that distinguishes one defendant's request to be apprised of necessary specifics about the charges against him from another's request for evidentiary detail is one that is quite difficult to draw. It is no solution to rely solely on the quantity of information disclosed by the government; sometimes, the large volume of material disclosed is precisely what necessitates a bill of particulars.

Moreover, to whatever limited degree prior decisions are helpful as a general matter when resolving demands for a bill of particulars, they are particularly unilluminating in this case. The geographical scope of the conspiracies charged in the Indictment is unusually vast. The Indictment alleges overt acts in furtherance of those conspiracies that occurred in Afghanistan, Pakistan, the Sudan, Somalia, Kenya, Tanzania, Malaysia, the Philippines, Yemen, the United Kingdom, Canada, California, Florida, Texas, and New York.

The breadth and duration of the criminal conduct with which the alleged conspirators are accused is similarly widespread. The Indictment alleges activity, occurring over a period of nearly ten years, that ranges from detonating explosives, to training Somali rebels, to transporting weapons, to establishing businesses, to lecturing on Islamic law, to writing letters, and to traveling, as overt acts in furtherance of the charged conspiracies.

We are hesitant, therefore, to place any significant weight on the conclusions reached in earlier cases in which courts were presented with an indictment alleging a more specific type of criminal conduct, occurring over a shorter period of time, in a more circumscribed geographical area. Although we express no view at this time as to whether the Indictment comports with the requirements of due process, we recognize that it does impose a seemingly unprecedented and unique burden on the Defendants and their counsel in trying to answer the charges that have been made against them.<sup>1</sup>

4. The above quote from *Bin Laden* is squarely on point with this case. The charge sheet includes allegations covering a time period beginning in 1989. It alleges actions by many individuals other than the accused. It alleges actions by other people that may or may not be criminal, and of which the accused may or may not have had knowledge. It fails to provide any specific times, dates, places, victims, or other information sufficient to allow counsel or Mr. Hicks to prepare a defense. Indeed, it is impossible to tell from the charge sheet exactly in what way Mr. Hicks's actions were criminal.

5. To make matters worse, the charges against Mr. Hicks have never before been leveled by the government in a military tribunal. In this unique context, the government should at the very least be compelled to provide the requested Particulars in this case of first impression.

6. Thus, counsel and Mr. Hicks cannot prepare a defense in this case without having more specifics regarding Mr. Hicks's alleged criminal conduct. The government's charge sheet is insufficient, and the commission should order the government to produce a bill of particulars, just as the military commission did in *In re Yamashita*.<sup>2</sup>

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<sup>1</sup> *U.S. v. Bin Laden*, 92 F.Supp. 2d 225, 233-235 (S.D.N.Y. 2000)(citations and footnotes omitted).

<sup>2</sup> *See In re Yamashita*, 327 U.S. 1, 12 (1946).

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